
HOUSE BILL No. 1210

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-26.

Synopsis: Statewide notification for utility excavations. Requires a person who operates an underground utility line or system to register with the Indiana Underground Plant Protection Service. Provides that an operator who fails to join the service is subject to a civil penalty of \$100 per day. Provides that penalties are to be deposited in the underground facilities damage prevention fund to provide annual grants to the service to fund safety and informational programs. Requires the notification of the service before demolition of a structure served by an underground facility. Repeals the statute authorizing the establishment of a voluntary association of underground utility operators.

Effective: July 1, 2002; January 1, 2003.

Bischoff

January 10, 2002, read first time and referred to Committee on Commerce, Economic Development and Technology.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE BILL No. 1210

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-26-3 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2002]: Sec. 3. As used in this chapter,
3 "association" means an organization formed in Indiana, **known as the**
4 **Indiana Underground Plant Protection Service**, to provide for
5 mutual receipt of notice of excavation or demolition for the
6 organization's member operators that have underground facilities in
7 Indiana.

8 SECTION 2. IC 8-1-26-7.5 IS ADDED TO THE INDIANA CODE
9 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
10 1, 2002]: **Sec. 7.5. As used in this chapter, "fund" refers to the**
11 **underground facilities damage prevention fund established by**
12 **section 14.7 of this chapter.**

13 SECTION 3. IC 8-1-26-11 IS AMENDED TO READ AS
14 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 11. As used in this
15 chapter, "person" means an individual, a corporation, a partnership, a
16 limited liability company, an association, or other entity organized
17 under the laws of any state. The term includes state, local, and federal



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agencies. **The term does not include the association.**

SECTION 4. IC 8-1-26-14.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2003]: **Sec. 14.3. (a) An operator shall be a member of the association.**

(b) After December 31, 2002, an operator is subject to a civil penalty of one hundred dollars (\$100) for each day that the operator is not a member of the association.

(c) The attorney general shall enforce this section by filing an action in a county in which the operator operates an underground facility.

(d) The attorney general shall deposit penalties recovered under this section into the fund.

SECTION 5. IC 8-1-26-14.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 14.7. (a) The underground facilities damage prevention fund is established for the purpose of providing grants to the association.**

(b) The treasurer of state shall administer the fund. The expenses of administering the fund shall be paid from money in the fund.

(c) The fund consists of civil penalties recovered under section 14.3 of this chapter and deposited into the fund.

(d) During January of each year, the treasurer of state shall distribute to the association the balance of the fund as of December 31 of the previous year. The association must use the grant to fund safety and informational programs designed to reduce the number of incidents of damage to underground facilities.

(e) All money deposited into the fund remains in the fund at the end of a fiscal year and does not revert to any other fund.

SECTION 6. IC 8-1-26-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 15. (a) An operator that has underground facilities located in Indiana shall ~~record with the county recorder of each county in which the facilities are located~~ a list containing register with and provide the following information to the association:**

(1) The name of each township ~~in the~~ and county in which the operator has underground facilities, including those facilities that have been abandoned in place by the operator but not yet physically removed. ~~The list must include~~

(2) The name of the operator. ~~and~~

(3) The name, title, address, and telephone number of the



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operator's representative designated to receive the written or telephonic notice of intent required by section 16 of this chapter.

(b) An operator shall **record report** any changes in the information contained in the list recorded under subsection (a) with the **county recorder of the county in which these facilities are located association** within thirty (30) calendar days of the change. The document reflecting the changes shall be cross-referenced to the original list recorded under subsection (a).

(c) The county recorder shall charge a fee in accordance with ~~IC 36-2-7-10~~.

(d) ~~An association meeting the requirements of section 17 of this chapter shall be responsible for providing the information required in subsections (a) and (b) for the association's members and shall be responsible for paying the fee contained in subsection (c) for the association's members.~~

SECTION 7. IC 8-1-26-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 16. (a) Except as provided in section 19 of this chapter, before commencing an excavation or demolition operation described in section 14 of this chapter, each person responsible for the excavation or demolition ~~must~~ **shall** serve written or telephonic notice **on the association of the person's intent** to excavate or demolish. The **association must receive the notice must be received** at least two (2) full working days but not more than twenty (20) calendar days before the commencement of the work. **Upon receiving notice, the association shall immediately notify each operator that:**

(1) has registered with the association under section 15 of this chapter; and

(2) has underground facilities located in the proposed area of excavation or demolition.

~~However, (b) A person responsible for excavation or demolition may commence work before the elapse of two (2) full working days if all affected operators have notified the person that the location of all the affected operators' facilities have been marked or that the affected operators have no facilities in the location of the proposed excavation or demolition. The notice must be served on each operator, or each operator's association, who has recorded a list required by section 15 of this chapter indicating that the operator has underground facilities located in the proposed area of excavation or demolition. A person responsible for demolition must give an operator a reasonable amount of time, as mutually determined by the association, the operator, the person responsible for demolition, and the project owner, to remove or~~

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1 protect the operator's facilities before demolition of the structure is
2 commenced.

3 ~~(b)~~ (c) The written or telephonic notice required by subsection (a)
4 must contain the following information:

5 (1) The name, address, and telephone number of the person
6 serving the notice, and, if different, the person responsible for the
7 excavation or demolition.

8 (2) The starting date, anticipated duration, and type of excavation
9 or demolition operation to be conducted.

10 (3) The location of the proposed excavation or demolition.

11 (4) Whether or not explosives or blasting are to be used.

12 (5) The approximate depth of excavation.

13 ~~(c)~~ (d) If the notice required by this section is by telephone, the
14 operator or association shall maintain an adequate record of the notice
15 for three (3) years to document compliance with this chapter. A copy
16 of the record shall be furnished to the person giving notice to excavate
17 or demolish upon written request.

18 SECTION 8. IC 8-1-26-18 IS AMENDED TO READ AS
19 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 18. (a) Each operator
20 or association notified under section 16 of this chapter shall, in two (2)
21 full working days of receiving the notice of intent provided in section
22 16 of this chapter (unless a shorter period is provided by agreement
23 between the person responsible for the excavation or demolition and
24 the operator), supply to the person responsible for the excavation or
25 demolition the following information, using maps when appropriate:

26 (1) The approximate location and description of all the operator's
27 underground facilities that may be damaged as a result of the
28 excavation or demolition.

29 (2) The location and description of all facility markers indicating
30 the approximate location of the underground facilities.

31 (3) Any other information that would assist that person in locating
32 and avoiding damage to the underground facilities, including
33 providing adequate temporary markings indicating the
34 approximate location of the underground facility and locations
35 where permanent facility markers do not exist.

36 (b) Facility locate markings must consist of paint, flags, or stakes or
37 any combination that mark the approximate location of the
38 underground facilities.

39 (c) Color coding of facility locate markings indicating the type of
40 underground facility must conform to the following color coding:

41 Facility and Type of Product	Specific Group
	Identifying Color



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- 1 (1) Electric power distribution
- 2 and transmission Safety red
- 3 (2) Municipal electric systems Safety red
- 4 (3) Gas distribution and
- 5 transmission High visibility
- 6 safety yellow
- 7 (4) Oil distribution and
- 8 transmission High visibility
- 9 safety yellow
- 10 (5) Dangerous materials, product
- 11 lines, steam lines High visibility
- 12 safety yellow
- 13 (6) Telephone and telegraph
- 14 systems Safety alert
- 15 orange
- 16 (7) Cable television Safety alert
- 17 orange
- 18 (8) Police and fire
- 19 communications Safety alert
- 20 orange
- 21 (9) Water systems Safety precaution
- 22 blue
- 23 (10) Sewer systems Safety green
- 24 (11) Proposed excavation White
- 25 (d) Each operator ~~or association~~ notified under section 16 of this
- 26 chapter shall, within two (2) full working days of receiving the notice
- 27 of intent provided in section 16 of this chapter, provide notification to
- 28 the person responsible for the excavation or demolition if the operator
- 29 has no facilities in the location of the proposed excavation or
- 30 demolition.

31 **(e) This section does not apply to an operator making an**

32 **emergency repair to its own underground facility.**

33 SECTION 9. IC 8-1-26-19 IS AMENDED TO READ AS

34 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 19. A person

35 responsible for emergency excavation or demolition to ameliorate an

36 imminent danger to life, health, property, or loss of service is not

37 required to comply with the notice requirements of section 16 of this

38 chapter. However, that person shall:

- 39 (1) give, as soon as practicable, oral notice of the emergency
- 40 excavation or demolition **through the association** to each
- 41 operator having underground facilities located in the area ~~or to an~~
- 42 ~~association described in section 17 of this chapter that serves an~~



operator where the excavation or demolition is to be performed;
and
(2) request emergency assistance from each operator identified in
locating and providing immediate protection to the operator's
underground facilities.

SECTION 10. IC 8-1-26-21 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 21. (a) Except as
provided in subsection (b), a person responsible for an excavation or
a demolition operation under section 14 of this chapter that results in
damage to an underground facility shall:

- (1) immediately upon discovery of the damage, notify the operator
of the facility **through the association** of the location and nature
of the damage; and
- (2) allow the operator reasonable time to accomplish necessary
repairs before completing the excavation or demolition in the
immediate area of the facility.

(b) A person responsible for an excavation or a demolition operation
under section 14 of this chapter that results in damage to an
underground facility permitting the escape of flammable, toxic, or
corrosive gas or liquid shall:

- (1) immediately upon discovery of the damage, notify;
 - (A) the operator **through the association**; and
 - (B) local police and fire departments having jurisdiction; and
- (2) take other action necessary to protect persons and property
and to minimize the hazards until arrival of the operator's
personnel or police and fire personnel.

SECTION 11. IC 8-1-26-22 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 22. (a) **This section
does not apply to the association.**

(b) If an operator suffers a pecuniary loss as a result of a violation
of this chapter, the operator may bring a civil action against the person
who caused the loss for the following:

- (1) An amount equal to the operator's actual damage to the
facility.
- (2) The costs of the action.
- (3) ~~A~~ Reasonable attorney's ~~fee~~ **fees**.

~~(b)~~ (c) At the court's discretion, a court having jurisdiction may
award punitive damages up to three (3) times the operator's actual
damage.

~~(c)~~ (d) It is a defense to an action brought under this chapter if an
operator fails to comply with the duties imposed under this chapter.

~~(d)~~ (e) In addition to the remedies described in subsection ~~(a)~~ (b),



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1 an operator may bring an action to enjoin a person excavating or
2 demolishing a structure in an area that includes the operator's facilities
3 until that person complies with this chapter.

4 SECTION 12. IC 8-1-26-17 IS REPEALED [EFFECTIVE JULY 1,
5 2002].

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